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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/637,403	08/11/2000	Aldo M. Pitt	0046,2001-000	7297

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EXAMINER

CINTINS, IVARS C

ART UNIT	PAPER NUMBER
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1724

12

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/637,403

Applicant(s)  
Pitt et al.

Examiner  
Ivars Cintins

Art Unit  
1724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Sep 23, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 38-45 and 50-79 is/are pending in the application.
- 4a) Of the above, claim(s) 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-45, 50, 51, and 53-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 9 6) ☐ Other: \_\_\_\_\_

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In view of the amendment to claim 52, positively reciting the presence of a centrifuge and a swinging bucket, this claim is no longer directed to the elected invention. Instead, claim 52 now belongs in non-elected Group I drawn to a separator.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 38-45, 50, 51, 53-59, 61, 63-68, 70, 73, 74 and 76-78 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by WO 00/35565. See page 10, line 26 through page 11, line 16; page 12, lines 8-11; page 15, lines 17-18; and Fig. 8.

Claims 38-45, 50, 51, 53-57, 63-66, 73, 76 and 78 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Stankowski et al. (U.S. Patent No. 5,674,395). See col. 4, lines 29 and 34; and Figs. 8 and 9.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 60, 62, 69, 71, 72, 75 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/35565. The reference discloses the claimed invention with the exception of the exact angle of the membranes (claims 60, 69, 72, 75 and 79), and the exact number of wells (claims 62 and 71). However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to angle the membranes of the reference system in the manner recited in claims 60, 69, 72, 75 and 79, since this reference clearly discloses a range which overlaps these values (see page 12, lines 8-11). Also, the exact number of wells employed in the reference system (see page 15, line 17) is not seen to materially affect the overall operation of the reference device, or to produce any new and unexpected result; and is therefore deemed to be an obvious matter of choice in design, insufficient to patentably distinguish claims 62 and 71.

Claims 60, 69, 72, 75 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stankowski et al. The reference discloses the claimed invention with the exception of

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the exact angle of the membranes. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to angle the membranes of the reference system in the manner recited in claims 60, 69, 72, 75 and 79, since this reference clearly discloses a range which overlaps these values (see col. 4, lines 29 and 34).

Applicant's arguments filed September 23, 2002 have been noted and carefully considered, but no longer appear to be relevant in view of the new grounds of rejection.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on August 29, 2002 prompted the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 609. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee

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pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. David Simmons, can be reached at (703) 308-1972.

The fax phone numbers for this art unit are: (703) 872-9311 for "Official" faxes after Final Rejection; (703) 872-9310 for all other "Official" faxes; and (703) 872-9492 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

*Ivars Cintins*  
**Ivars C. Cintins**  
**Primary Examiner**  
**Art Unit 1724**

I. Cintins  
December 1, 2002